

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-04-511
	§	C.A. No. C-06-554
BENITO AVILA-SALDANA,	§	
	§	
Defendant/Movant.	§	

**ORDER CONSTRUING MOTION AS MOTION
TO VACATE, SET ASIDE OR CORRECT
SENTENCE PURSUANT TO 28 U.S.C. § 2255
AND ORDER FOR GOVERNMENT TO RESPOND**

On December 11, 2006, Defendant Benito Avila-Saldana (“Avila”) filed a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2241. (C.A. No. C-06-554, D.E. 1.) By Order entered January 8, 2007, this Court notified Avila that it intended to construe his motion as a motion to vacate, set aside or correct her sentence pursuant to 28 U.S.C. § 2255. (D.E. 34).¹ Pursuant to the directives of Castro v. United States, 540 U.S. 375 (2003), the Court gave Avila the opportunity to supplement his motion or to voluntarily withdraw it. (D.E. 34 at 4). The Court ordered that any such request from Avila be filed within 45 days after the entry of the Order. (D.E. 34 at 4). If he failed to supplement or withdraw his motion, the Order instructed that the Court would construe his motion as a § 2255 motion and would either order a government response or rule on it. Because the Order was entered January 8, 2007, Avila had until February 22, 2007 to respond.

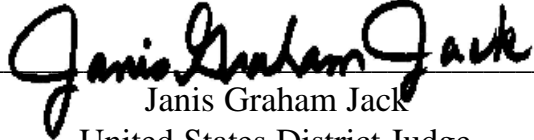
To date, Avila has not filed anything in response to the Court’s order. Accordingly, his § 2241 motion is hereby construed as a motion pursuant to 28 U.S.C. § 2255.

¹ Unless otherwise noted, docket entry references are to the criminal case.

It is ordered that the United States shall answer the § 2255 motion not later than sixty days after the entry of this Order. It is further ordered that the United States provide, at the time of its answer, transcripts of all pertinent proceedings that are not already part of the record. Relevant affidavits, if any, are also to be filed with the answer.

Pursuant to Rule 5(d) of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2006), Avila may file a reply not later than thirty days after service of the government's answer.

ORDERED this 6th day of March, 2007.


Janis Graham Jack
United States District Judge